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January 7, 2005

Country of Origin Labeling Program
Room 2092-S
Agricultural Marketing Service
United States Department of Agriculture
STOP 0249
1400 Independence Avenue, SW
Washington, DC 20250-0249

**Re: Docket #LS-03-04, Mandatory Country of Origin Labeling of Fish
and Shellfish**

Dear Sir/Madam:

The American Frozen Food Institute (AFFI) welcomes this opportunity to provide comments on the Agricultural Marketing Service's (AMS) interim final rule implementing the country of origin labeling provision in the Farm Security and Rural Investment Act of 2002 (hereinafter, mandatory COOL) for fish and shellfish. AFFI is the national trade association representing frozen food manufacturers, their marketers and suppliers. AFFI's more than 500 member companies are responsible for approximately 90 percent of the frozen food processed annually in the United States, valued at more than \$60 billion. AFFI members are located throughout the country and are engaged in the manufacture, processing, transportation, distribution, and sale of products nationally and internationally.

AFFI is mindful of the difficult task AMS has faced in trying to implement mandatory COOL. AFFI appreciates the steps AMS has taken in the interim final rule to clarify the exemption from mandatory COOL for processed fish and shellfish products. AMS's interpretation of the exemption is fully consistent with the intent of Congress not to include "processed products" in mandatory COOL.

The commodities covered under the interim final rule are farm-raised and wild fish and shellfish, including "fillets, steaks, nuggets, and any other flesh." These covered commodities must bear or be accompanied by country of origin and method of production information unless they qualify as processed food items.

According to the interim final rule, a “processed food item” means:

a retail item derived from fish or shellfish that has undergone specific processing resulting in a change in the character of the covered commodity, or that has been combined with at least one other covered commodity or other substantive food component (e.g. breaded, tomato sauce), except that the addition of a component (such as water, salt, or sugar) that enhances or represents a further step in the preparation of the product for consumption, would not in itself result in a processed food item.

AFFI agrees with USDA's definition of a processed food item and the specific processing steps that change the character of fish or seafood, including cooking (e.g., frying, broiling, grilling, boiling, steaming, baking, roasting), curing (e.g., salt curing, sugar curing, drying), smoking (hot or cold), and restructuring (e.g., emulsifying and extruding, compressing into blocks and cutting into portions). USDA's interpretation of the term, and the type of processing that changes the character of the food, is consistent with the definitions of processing in many laws and regulations including, but not limited to:

- The Organic Foods Production Act, 7 U.S.C. § 6501 et seq;
- The Agricultural Marketing Act, 7 U.S.C. §§ 1621 et seq;
- AMS regulations governing meat grading, certification, and standards which define “processing” as “drying, curing, smoking, cooking, seasoning, or flavoring or any combination of such processes, with or without fabricating.” 7 C.F.R. § 54.1;
- The definition of egg products regulated under the Egg Products Inspection Act, 21 U.S.C. §§ 1031-1056, and the Agricultural Marketing Act of 1946, as amended; and
- AMS regulations governing processed fruits and vegetables 7 C.F.R. § 52.2.

AFFI also agrees with the examples of processed food items identified by the agency in the interim final rule, namely: fish sticks, surimi, mussels in tomato sauce, seafood medley, coconut shrimp, soups, stews, chowders, sauces, pates, salmon that has been smoked, marinated fish fillets, canned tuna, canned sardines, canned salmon, crab salad, shrimp cocktail, gefilte fish, sushi, breaded fish fillets, and breaded shrimp. As previously stated, AMS defined “processing” and “processed” to include a wide array of food preparation steps, including freezing, under the Organic Foods Production Act and the voluntary fruit and vegetable grading

programs carried out under the Agricultural Marketing Act. The interim final rule for fish and seafood recognizes this precedent in the context of breaded products.

AFFI applauds AMS's careful consideration of the processed food item exemption, in light of both available legislative history and other definitions of processed food put forward by it and other agencies and has promulgated a consistent workable definition. The result of AMS's hard work is a consistent workable definition of processed food item in the interim final rule that should be retained and finalized.

AFFI appreciates this opportunity to comment on the interim final rule.

Sincerely,

A handwritten signature in dark ink, appearing to read "Leslie G. Sarasin". The signature is written in a cursive, flowing style.

Leslie G. Sarasin, CAE
President and
Chief Executive Officer